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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

APR 6 - 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of

TRIAD FAMILY NETWORK, INC.  
Winston-Salem, North Carolina  
Channel 207C3

POSITIVE ALTERNATIVE RADIO, INC.  
Asheboro, North Carolina  
Channel 207A

For Construction Permit for a  
New Noncommercial Educational  
FM Station

) MM No. 93-41

) BPED-910227MD

) BPED-911119MC

TO: Administrative Law Judge  
Joseph P. Gonzalez

PETITION TO DISMISS TRIAD APPLICATION

Positive Alternative Radio, Inc. ("Radio"), through its

days after the date established for filing notices of appearance" (§1.325(c)) or by April 5, 1993.

Radio hand delivered to counsel for Triad copies of its Standard Document Production materials and its Standardized Integration Statement by April 5, 1993.

Triad has produced neither materials listed in the Standard Document Production Order, nor a Standardized Integration Statement.

The Commission stated in a Memorandum Opinion and Order, Gen. Doc. 90-264, released May 15, 1991 (FCC 91-154) at footnote 3:

With further regard to the standardized document production order and integration statement, we agree with the FCBA's comment that disputes over the sufficiency of an exchange should not be elevated to a question of whether an applicant should be dismissed. However, a failure to exchange any materials would constitute a failure to prosecute, resulting in the dismissal of an applicant. . .

No exceptions are made by the Commission. It should be noted that the language is mandatory: ". . .would constitute a failure to prosecute. . .", not "could" or "may" or "might". Instead of complying with §1.325(c) Triad directed a letter to the Presiding

Nor do the Hearing Designation Orders waive the required compliance with §1.325(c) of the rules.<sup>1</sup> The ruling of the Presiding Judge in MM Docket 92-116 is not binding in this proceeding, and it may be noted, MM Docket 92-116 did not involve

to void that rule. Triad has failed to comply with it, and accordingly is guilty of a failure to prosecute its application. Pursuant to the above-quoted Commission admonition, Triad's application must be dismissed.

Respectfully submitted,

POSITIVE ALTERNATIVE RADIO, INC.

By   
Julian P. Freret  
Its Counsel

BOOTH, FRERET & IMLAY  
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April 6, 1993

Federal Communications Commission

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DA 91-474

FCC MAIL SECTION

HEARING DESIGNATION ORDER

Before the

Adopted: May 21, 1991

Released: June 17, 1991

plicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

3. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), the extent to which each of the proposed operations will be integrated into the overall cultural and educational objectives of the respective applicants; and whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED. That in the event a construction permit is awarded to LIU as a result of this proceeding, its grant will be subject to whatever action, if any, the Commission may deem appropriate, in light of the outcome of the complaint proceedings listed in paragraph 3 above.

9. IT IS FURTHER ORDERED. That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

## FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief  
Audio Services Division  
Mass Media Bureau

**MM Docket No. 92-116**

**For a Construction Permit  
for a New FM Station  
Binghamton, New York**

4. *Environmental Issues.* Our engineering study indicates that all three applicants failed to address the matter of how they propose to resolve any RF exposure to workers on their respective towers. See 47 C.F.R. § 1.1307(b). Consequently, we are concerned that each may have failed to comply with the environmental criteria set forth in the *Report and Order in Gen. Docket No. 79-163*, 51 Fed. Reg. 14999 (April 12, 1986). See also, *Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 24, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. § 1.1307 states that an EA must be prepared if the proposed operation would cause exposure to workers or the general public to levels of RF radiation exceeding specific standards. Since the applicants failed to indicate how workers engaged in maintenance and repair would be protected from exposure to levels exceeding the ANSI guidelines, each will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. See generally, OST Bulletin No. 65 (October, 1985) entitled "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation," at 28. Therefore, each will be required to file, within 30 days of the receipt of this *Hearing Designation Order*, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 2289 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337

based on its analysis of the Environmental Assessments      spective applicants; and (c) whether other factors in



**CERTIFICATE OF SERVICE**

I, Margaret A. Ford, Office Manager of the law firm of Booth, Freret & Imlay, do hereby certify that copies of the foregoing **PETITION TO DISMISS TRIAD APPLICATION** were mailed this 6th day of April, 1993, to the offices of the following:

\*Administrative Law Judge  
Joseph P. Gonzalez  
Federal Communications Commission  
2000 L Street, N. W., Room 221  
Washington, D. C. 20554

\*Norman Goldstein, Esquire  
Hearing Branch, Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N. W., Room 7212  
Washington, D. C. 20554

\*Chief, Data Management Staff  
Audio Services Division  
Mass Media Bureau  
Federal Communications Commission  
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Washington, D. C. 20554

B. Jay Baraff, Esquire  
Baraff, Koerner, Olender  
& Hochberg, P.C.  
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